

ORIGINAL
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9 Attorneys for Plaintiff
CRAIG WITT

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 CRAIG WITT, on behalf of himself, all other persons similarly situated and the general public,

) Case No.

11CV1632 JAH JMA

13) CLASS ACTION COMPLAINT FOR
14 Plaintiff,) DAMAGES AND INJUNCTIVE RELIEF
15 vs.)
16 NCO FINANCIAL SYSTEMS, INC., an)
Delaware corporation)
17 Defendant.)
18)
19 Plaintiff Craig Witt by his attorneys, on behalf of himself, all other persons similarly situated
20 and the general public, alleges upon personal knowledge as to himself and his acts stated herein, and
21 as to all other matters upon information and belief upon, as follows:
22
INTRODUCTION
23
24 1. Plaintiff Craig Witt (or "Plaintiff") brings this action for damages, and any other
available legal or equitable remedies, resulting from the actions of Defendant NCO Financial
25 Systems, Inc. (hereinafter "Defendant" or "NCO"), in negligently, knowingly, and/or willfully
26 contacting Plaintiff on his cellular telephone, in violation of the Telephone Consumer Protection Act,
27 47 U.S.C. § 227 *et seq.*, ("TCPA"), thereby invading Plaintiff's privacy.
28

BY FAX

JURISDICTION AND VENUE

2 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks up to
3 \$1,500 in damages for each call in violation of the TCPA, which exceeds the \$5,000,000.00
4 threshold for federal court jurisdiction. Further, Plaintiff alleges a national class, which will involve
5 more than 100 persons and at least one class member belonging to a different state. Therefore, both
6 elements of diversity jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”) are present,
7 and this Court has jurisdiction.

8 3. Venue is proper in the United States District Court for the Southern District of
9 California pursuant to 18 U.S.C. § 1331(b) and 1441(a) because the events giving rise to Plaintiff's
10 causes of action against Defendant occurred within the State of California and the County of San
11 Diego.

PARTIES

13 4. Plaintiff Craig Witt is an adult residing in the County of San Diego, California, which
14 is within this judicial district. At all times relevant, Plaintiff was an individual residing within the
15 State of California. On numerous occasions within a year prior to the filing of this Complaint,
16 Plaintiff was contacted by NCO on his cellular telephone via an "automatic telephone dialing
17 system," as defined by 47 U.S.C. § 227(a)(1). During these telephone calls, NCO used "an artificial
18 or prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A). Plaintiff's telephone number
19 NCO called was assigned to a cellular telephone service for which Plaintiff incurs a charge for
20 incoming calls as described in 47 U.S.C. § 227(b)(1). Plaintiff did not provide express consent to
21 NCO to receive calls on Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227(b)(1)(A).

22 5. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all
23 times mentioned herein, was a corporation whose primary corporate address and headquarters is
24 Horsham, Pennsylvania, and that Defendant does business in the County of San Diego.

CLASS ACTION ALLEGATIONS

26 6. Plaintiff brings this action on behalf of himself and on behalf of and all others
27 similarly situated defined as all persons within the United States who received any telephone call
28 from NCO to said person's cellular telephone through the use of any automatic telephone dialing

1 system or an artificial or prerecorded voice, from September 12, 2008 to the date of trial ("the
2 Class"). NCO, its shareholders, officers, directors, employees and agents are excluded from the
3 Class.

4 7. Plaintiff does not, as yet, know the exact size of the Class. Based upon the nature of
5 NCO's business, Plaintiff believes that there are more than 100 Class members, and that Class
6 members are geographically dispersed throughout the United States. Thus, the Class is sufficiently
7 numerous to make joinder impracticable, if not completely impossible. The disposition of the claims
8 of all members of the Class in a class action will benefit both the parties and the Court.

9 8. Plaintiff and members of the Class were harmed by the acts of NCO in at least the
10 following ways: (a) Defendant illegally contacted Plaintiff and Class members via their cellular
11 telephones thereby causing Plaintiff and Class members to incur certain cellular telephone charges
12 or reduce cellular telephone time for which Plaintiff and Class members previously paid; (b) by
13 having to retrieve or administer messages left by Defendant during those illegal calls, and (c)
14 invading the privacy of said Plaintiff and Class members. Plaintiff and the Class were damaged by
15 such acts.

16 9. Plaintiff reserves the right to expand the Class' definition to seek recovery on behalf
17 of additional persons as warranted as facts are learned in further investigation and discovery.

18 10. There is a well-defined community of interest in the questions of law and fact
19 involved affecting the parties to be represented. The questions of law and fact to the Class
20 predominate over questions which may affect individual Class members, including the following:

21 a. Whether, within one year prior to the filing of this Complaint, Defendant made any
22 call (other than a call made for emergency purposes or made with the prior express
23 consent of the called party) using any automatic telephone dialing system or an
artificial or prerecorded voice to any telephone number assigned to a cellular
telephone service.

24 b. Whether Plaintiff and the Class were damaged thereby, and the extent of damages for
such violation; and

25 c. Whether Defendant should be enjoined from engaging in such conduct in the future.

26 11. As a person that received numerous calls using an automatic telephone dialing system
27 or an artificial or prerecorded voice, without Plaintiff's express prior consent, Plaintiff is asserting
28

1 claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the
2 interest of the Class in that Plaintiff has no interests antagonistic to any member of the Class. In
3 addition, Plaintiff has retained competent counsel experienced in class action litigation to further
4 ensure such protection and intend to prosecute this action vigorously.

5 12. Plaintiff and the members of the Class have all suffered irreparable harm as a result
6 of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue
7 to face the potential for irreparable harm. In addition, these violations of law will be allowed to
8 proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size
9 of the individual Class member's claims, few, if any, Class members could afford to seek legal
10 redress for the wrongs complained of herein.

11 13. The prosecution of separate actions by individual members of the Class would create
12 a risk of inconsistent or varying adjudications with respect to individual members of the Class, which
13 would establish incompatible standards of conduct for the Defendant in California and the United
14 States and would lead to repetitious trials of the numerous common questions of fact and law in
15 California and the Untied States. Plaintiff know of no difficulty that will be encountered in the
16 management of this litigation that would preclude its maintenance as a class action. As a result, a
17 class action is superior to other available methods for the fair and efficient adjudication of this
18 controversy.

19 14. Proper and sufficient notice of this action may be provided to the Class members by
20 direct mail and/or through notice published on the Internet, in television, radio, and/or print media
21 outlets, and/or at on Defendant's web sites.

22 15. Moreover, the Plaintiff's and the Class' individual damages are insufficient to justify
23 the cost of litigation, so that in the absence of class treatment, Defendant's continuing violations of
24 law inflicting substantial damages in the aggregate would go unremedied without certification of the
25 Class. Class-wide damages are essential to induce Defendant to comply with federal and California
26 law. Moreover, absent certification of his action as a class action, Plaintiff and the members of the
27 Class will continue to be damaged, thereby allowing these violations of law to proceed without a
28 remedy.

1 16. Defendant has acted on grounds generally applicable to the Class, thereby making
2 appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as
3 a whole.

FACTUAL ALLEGATIONS

5 17. At all relevant times, Plaintiff and the Class are, and at all times mentioned herein
6 were, "persons" as defined by 47 U.S.C. § 153(10).

7 18. NCO is, and at all times mentioned herein was, a corporation and a "person," as
8 defined by 47 U.S.C. § 153(10).

9 19. On numerous times, within one year prior to the date this Complaint was filed, NCO
10 contacted Plaintiff and the Class on their cellular telephone via an “automatic telephone dialing
11 system,” as defined by 47 U.S.C. § 227(a)(1).

12 20. During these telephone calls, NCO used "an artificial or prerecorded voice" as
13 prohibited by 47 U.S.C. § 227(b)(1)(A).

14 21. The telephone numbers of Plaintiff and the Class called by NCO were assigned to a
15 cellular telephone service for which Plaintiff incurs a charge for incoming calls as defined by 47 U.S.C.
16 § 227(b)(1).

17 22. The telephone calls made to Plaintiff and the Class by NCO constituted calls that
18 were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

19 23. Plaintiff and the Class did not provide express consent to NCO to receive calls on
20 Plaintiff's and the Class' cellular telephones, pursuant to 47 U.S.C. § 227(b)(1)(A).

21 24. As a result, the telephone calls made to Plaintiff and the Class by NCO were in
22 violation of 47 U.S.C. § 227(b)(1).

FIRST CAUSE OF ACTION

**(Negligent Violations of the Telephone Consumer Protection Act
(T.C.P.A.)**

47 U.S.C. § 227 *et seq.*)

(Against All Defendants)

25. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as
26 though fully stated herein.

26. The foregoing acts and omissions of NCO constitute numerous and multiple negligent

1 violations of the TCPA, including but not limited to each and every one of the above-cited provisions
2 of 47 U.S.C. § 227 *et seq.*

3 27. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and
4 the Class members are entitled to an award of \$500.00 in statutory damages, for each and every
5 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

6 28. Plaintiff and the Class members are also entitled to and seek injunctive relief
7 prohibiting such conduct in the future.

8 **SECOND CAUSE OF ACTION**
9 **(Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
10 **47 U.S.C. § 227 *et seq.*)**
11 **(Against All Defendants)**

12 29. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as
13 though fully stated herein.

14 30. The foregoing acts and omissions of NCO constitute numerous and multiple knowing
15 and/or willful violations of the TCPA, including but not limited to each and every one of the above-
16 cited provisions of 47 U.S.C. § 227 *et seq.*.

17 31. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et*
18 *seq.*, Plaintiff and each of the Class members are entitled to treble damages, as provided by statute;
19 up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C.
§ 227(b)(3)(C).

20 32. Plaintiff and the Class members are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **PRAAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully request the Court grant Plaintiff and the Class members
24 the following relief against Defendant:

25 1. That this action be certified as a class action on behalf of the proposed plaintiff Class
26 and the Plaintiff be appointed as the representatives of the Class;

27 2. As a result of Defendant's negligent violation of 47 U.S.C. § 227(b)(1), Plaintiff seeks
28 for himself and each Class member \$500.00 in statutory damages, for each and every violation,

pursuant to 47 U.S.C. § 227(b)(3)(B).

3. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in
3 the future.

4 4. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1),
5 Plaintiff seeks for himself and each Class member treble damages, as provide by statute, up to
6 \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
7 227(b)(3)(C).

8 5. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in
9 the future.

10 6. Prejudgment and post judgment interest as provided by statute;

11 7. Attorneys' fees, expenses, and costs of this action pursuant to statute; and

12 8. Such further relief as this Court deems necessary, just, and proper.

13 | Dated: July 25, 2011 KEEGAN & BAKER, LLP

100

Patrick N. Keegan, Esq.
e-mail: pkeegan@keeganbaker.com
Attorneys for Plaintiff Craig Witt

DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

4 | Dated: July 25, 2011

KEEGAN & BAKER, LLP

Patrick N. Keegan, Esq.
e-mail: pkeegan@keeganbaker.com
Attorneys for Plaintiff Craig Witt

ORIGINAL

FJS 44 (Rev. 12-07)

CIVIL COVER SHEET BY FAX

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC., a Delaware corporation

I. (a) PLAINTIFFS

CRAIG WITT, on behalf of himself, all other persons similarly situated and the general public;

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Patrick N. Keegan, Esq. (SBN 167698), KEEGAN & BAKER, LLP
6870 Embarcadero Lane, Carlsbad, CA 92011; Tel (760) 929-9303

County of Residence of First Listed Defendant

Montgomery PA

DEPUTY

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

11CV1632 JAH JMA**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only) U.S. Government Plaintiff Federal Question yeb
(U.S. Government Not a Party) U.S. Government Defendant Diversity yeb
(Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTE	DEF	PTE	DEF
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> yeb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> yeb	<input type="checkbox"/>

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<input checked="" type="checkbox"/> PERSONAL INJURY	<input checked="" type="checkbox"/> 610 Agriculture	<input checked="" type="checkbox"/> 422 Appeal 28 USC 1333	<input type="checkbox"/> 400 State Reapportionment
<input checked="" type="checkbox"/> 120 Marine	<input checked="" type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 620 Other Food & Drug	<input checked="" type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Appraisement
<input checked="" type="checkbox"/> 130 Miller Act	<input checked="" type="checkbox"/> 315 Airplane Product Liability	<input checked="" type="checkbox"/> 625 Personal Injury - Product Liability	<input checked="" type="checkbox"/> 45 USC 157	<input type="checkbox"/> 420 Banks and Banking
<input checked="" type="checkbox"/> 140 Negotiable Instruments	<input checked="" type="checkbox"/> 320 Assume Label & Similar	<input checked="" type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input checked="" type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce
<input checked="" type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input checked="" type="checkbox"/> 320 Employee Employment Liability	<input checked="" type="checkbox"/> 370 Other Fraud	<input checked="" type="checkbox"/> 640 R.R. & Trust	<input type="checkbox"/> 460 Deportation
<input checked="" type="checkbox"/> 151 Medicare Act	<input checked="" type="checkbox"/> 330 Marine Product Liability	<input checked="" type="checkbox"/> 371 Truth in Lending	<input checked="" type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input checked="" type="checkbox"/> 152 Recovery of Delinquent Student Loans (Instal. Veterans)	<input checked="" type="checkbox"/> 345 Marine Product Liability	<input checked="" type="checkbox"/> 380 Other Personal Property Damage	<input checked="" type="checkbox"/> 660 Occupational Safety Health	<input type="checkbox"/> 480 Consumer Credit
<input checked="" type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input checked="" type="checkbox"/> 350 Motor Vehicle	<input checked="" type="checkbox"/> 381 Property Damage Product Liability	<input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV
<input checked="" type="checkbox"/> 160 Stockholders' Suits	<input checked="" type="checkbox"/> 355 Motor Vehicle Liability	<input checked="" type="checkbox"/> 390 Other Personal Property Liability	<input type="checkbox"/>	<input type="checkbox"/> 500 Selective Service
<input checked="" type="checkbox"/> 190 Other Contracts	<input checked="" type="checkbox"/> 360 Other Personal Liability	<input checked="" type="checkbox"/> 400 Other Personal Property	<input type="checkbox"/>	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input checked="" type="checkbox"/> 195 Contract Product Liability	<input checked="" type="checkbox"/> 365 Other Personal Injury	<input checked="" type="checkbox"/> 410 Fair Labor Standards Act	<input checked="" type="checkbox"/> 860 CH 341 (95d)	<input type="checkbox"/> 870 Customer Challenge
<input checked="" type="checkbox"/> 196 Franchise	<input checked="" type="checkbox"/> 370 Other Civil Rights	<input checked="" type="checkbox"/> 420 Labor Mgmt. Relations	<input checked="" type="checkbox"/> 862 Black Lung (92S)	<input type="checkbox"/> 875 Energy Policy & Conservation Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 863 DPPG/DIWW (405(g))
<input checked="" type="checkbox"/> 210 Land Contingencies	<input checked="" type="checkbox"/> 411 Voting	<input checked="" type="checkbox"/> 510 Actions in Vacate Sentence	<input checked="" type="checkbox"/> 864 Title XLI	<input type="checkbox"/> 880 Other Statutory Actions
<input checked="" type="checkbox"/> 220 Foreclosure	<input checked="" type="checkbox"/> 412 Employment	<input checked="" type="checkbox"/> 515 General	<input checked="" type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Agricultural Acts
<input checked="" type="checkbox"/> 230 Real Estate & Ejectment	<input checked="" type="checkbox"/> 413 Housing Accommodation	<input checked="" type="checkbox"/> 515 Death Penalty	<input type="checkbox"/>	<input type="checkbox"/> 902 Economic Stabilization Act
<input checked="" type="checkbox"/> 240 Torts to Land	<input checked="" type="checkbox"/> 414 Welfare	<input checked="" type="checkbox"/> 540 Mandamus & Other Civil Rights	<input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 910 Environmental Matrix
<input checked="" type="checkbox"/> 245 Torts Product Liability	<input checked="" type="checkbox"/> 415 Amer. w/ Disabilities - Disagreement	<input checked="" type="checkbox"/> 550 Civil Rights	<input checked="" type="checkbox"/> 871 IRS Third Party	<input type="checkbox"/> 915 Energy Allocation Act
<input checked="" type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 416 Amer. w/ Disabilities - Other	<input checked="" type="checkbox"/> 553 Prison Condition	<input checked="" type="checkbox"/> 26 USC 7699	<input type="checkbox"/> 925 Freedom of Information Act
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 930 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 935 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity) 28 U.S.C. section 1332(d)(2) 28:1331 yeb**VI. CAUSE OF ACTION**

Brief description of cause: Contacting Plaintiff on his cellular telephone via an automatic telephone dialing system.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE Thomas J. Whelan

DOCKET NUMBER 3:07-cv-01413-W-AJB

DATE

07/25/2011

SIGNATURE OF ATTORNEY OF RECORD

*Thomas N. Keegan***FOR OFFICE USE ONLY**RECEIPT # 28679AMOUNT \$b.350APPLYING TO No 7/25/11

JUDGE _____

MAG. JUDGE _____

CH

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS028679
Cashier ID: kdelabar
Transaction Date: 07/25/2011
Payer Name: RAPID LEGAL

CIVIL FILING FEE

For: WITT V. NCO FNCL
Case/Party: D-CAS-3-11-CV-001632-001
Amount: \$350.00

CHECK

Check/Money Order Num: 41705
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.